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EXAMINER

FILIPCZYK, MARCIN R

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/523,313

Applicant(s)

ROSE, TONY GERARD

Examiner

Marc R Filipczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
- 4a) Of the above claim(s) 1-48, 55-67 and 84-86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-54, 68-83 and 87-90 is/are rejected.
- 7) ☒ Claim(s) 49-54, 68-83 and 87-90 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

This action is responsive to Applicant's response filed on November 3, 2004. Claims 1-48, 55-67 and 84-86 have been cancelled, claims 49-54, 68-83, 87 and 88 have been amended and claims 89 and 90 are added, hence claims 49-54, 68-83 and 87-90 are pending.

**To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).**

***Claim Objections***

Claims 49-54, 68-83 and 87-90 are objected to because of the following informalities:

Regarding the preambles of claims 49 and 52, "displaying the" should be replaced with "displaying" because of a grammatical error. Second, the term "direction" is interpreted broadly as being equivalent with "distance" because direction attributes such as left, right, north or west are not accompanied in the applicant's use of direction, instead, the invention is based on similarities associated with a distance, see summery of the invention and figures.

Further regarding claim 52, the term, "relationship" should be in a plural form.

Regarding claim 90, the phrase "a data" should be replaced with "of data" to correct the grammatical syntax.

Regarding claims 50, 51, 53, 54, 68-83 and 87-90 depend from claims 49 and 52 respectfully, and therefore contain the informalities of those claims.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 49-54, 68-83 and 87-90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 49 and 52, the phrase, "other sets of data" is indefinite. The meets and bounds of "other" are not clear because other does not comprise a definite meaning, instead the interpretation is open to the reader.

Regarding claims 50, 51, 53, 54, 68-83 and 87-90 depend from claims 49 and 52 respectfully, and therefore contain the deficiencies of those claims.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 49-54, 68-83 and 87-90 are rejected under 35 U.S.C. 102(e) as being anticipated by Czerwinski et al (U.S. Patent No. 6,243,093).**

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Regarding claims 49, 51, 52, 54, 84, 86, 89 and 90, Czerwinski discloses a data display apparatus/method for displaying the relationships between sets of data (content of each object), the apparatus comprising: (title)

selecting means for selecting target data from the sets of data; (fig. 2, item 264, col. 18, lines 8-16 and fig. 22, item 2220)

obtaining means for obtaining similarity values among unselected sets of data in order to determine a distance from the target data to each of the other sets of data on a display screen (fig. 2, item 268, col. 20, lines 17-24, also see fig. 22, items 2210, 2220 and 2230);

display control means (fig. 1B, item 104) for controlling a display of the other sets of data on the display screen positioned around the target data on the screen on the basis of the determined distance (fig. 22, items 2210, 2220 and 2230).

Regarding claims 50 and 53, Czerwinski discloses display means to display said representations as images of said sets of data (col. 6, lines 26-32 and 38-42).

Regarding all the instances of claims 68-73 and 75-83, Czerwinski discloses receiving an input query and determining similarity values (fig. 2, item 264, and col. 18, lines 8-16).

Regarding all the instances of claim 74, Czerwinski discloses displaying thumbnail images of the sets of data as the representations (col. 6, lines 40-42).

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Regarding all the instances of claims 87 and 88, Czerwinski discloses a storage medium with a cpu to carry out instruction and a signal carrying instructions (fig. 1B, 102, 104, 106 and 108).

**Claims 49, 51, 52, 54, 89 and 90 are rejected under 35 U.S.C. 102(e) as being anticipated by Ikeda (U.S. Patent No. 6,564,206).**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 49, 51, 52, 54, 84 and 86, Ikeda discloses a data display apparatus/method for displaying the relationships between sets of data (content of each object), the apparatus comprising: (abstract, lines 1-10)

selecting means for selecting target data from the sets of data (fig. 6 and fig 20, steps S2005 and S2010);

obtaining means for obtaining similarity values among unselected sets of data in order to determine a distance from the target data to each of the other sets of data on a display screen (fig. 6, item 709 and fig. 20, step S2011);

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display control means for controlling a display of the other sets of data on the display screen positioned around the target data on the screen on the basis of the determined distance (fig. 6, ID).

### ***Response to Arguments***

Applicant's arguments filed November 3, 2004 have been fully considered but they are not persuasive. The arguments and responses are listed above.

Applicant argues on page 12 in the 11/3/2004 response that Czerwinski's "proximity cluster determination process 268 is only concerned with where a user has placed an object (col. 20, lines 30-35)."

In response to Applicant's argument, Examiner disagrees. Examiner points the Applicant's attention to the same paragraph, (col. 20, lines 15-41) to obtain a more detailed teaching of Czerwinski's cluster determination process 268. Specifically, lines 37-39 clarify that, "the user interface of the present invention is based, **in part**, on the recognition that a user **may** have non-intuitive or non-objective reasons for grouping objects."

Applicant argues on page 12 in the 11/3/2004 response that Czerwinski's proximity clustering is not based on similarity values.

In response to Applicant's argument, Examiner disagrees. Czerwinski clearly discloses proximity clustering is based on similarity values (see col. 20, lines 17-24 for explanation of

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clustering based on proximity and see abstract for explanation of proximity being based on similarity or matching).

Applicant argues on page 14 in the 11/3/2004 response that “Ikeda is not seen to teach obtaining similarity values of unselected others of sets of data in order to determine a direction from a target data.”

In response to Applicant’s argument, Examiner disagrees. On figure 20, Ikeda discloses that an image is selected without (or after) performing a query and then a similarity search is performed on all the other images in respect to the selected image according to the invention, please refer to figures 6 and 20, Ikeda. Note, Applicant’s claimed “direction” is interpreted as distance based on similarities.

Applicant argues on page 14 in the 11/3/2004 response that “Ikeda is not prior art by virtue.”

In response to Applicant’s argument, Examiner notes that Applicant’s foreign priority of 4/15/1999 does not precede Ikeda’s foreign priority of 10/5/1998, document JP 10-296240.

With respect to all the pending claims 49-54, 68-83 and 87-90, no other issues are raised thus all the pending claims remain rejected.

### ***Conclusion***



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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Applicant's amendment of at least substantially amending independent claims 49 and 52 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF  
March 1, 2005

  
**FRANTZ COBY**  
**PRIMARY EXAMINER**